WILLS—CONSTRUCTION—PRECATORY TRUST.—Testator died leaving a grandson his sole descendant, and also leaving a widow, a second wife, to whom by will he left his entire estate, with this provision for his grandson: "* * * I have made provisions for the care, support, and education of the said child until his arrival at twenty-one years of age, leaving the entire charge and disposition of that matter, however, in the good judgment and discretion of my said wife, Catherine Ellis." *Held*, first, that the estate of the testator in the hands of the widow was charged with the care, support, and education of the child until he attained twenty-one years of age; second, that the court would enforce this charge, and fix the amount to be appropriated for that purpose. *Ellis* v. *Ellis* (1903), — N. J. Eq. —, 55 Atl. Rep. 103.

Although there are few cases in which courts interfere where discretion is left to the precatory trustee, nevertheless the above case seems to be correctly decided. If the court had not stepped in and determined what was a fair compliance with testator's intentions, the widow by an unreasonable exercise of her discretion, could have made only meager and inadequate provision for the child.

WILLS — UNDUE INFLUENCE — EVIDENCE.—Testator for the two weeks preceding his death had been continually intoxicated. While in this condition, a week before his death, a woman, the sole legatee and executrix under the will, took him from his lodging house to her own. She obtained possession of his bank book which was transferred to her by deceased at a time when he was so ill that he could not hold a pen; she sent for the lawyer to draw his will and was the only person present, excepting the lawyer, when it was drawn; she obtained a witness to attest it; she did not inform the lawyer that testator had a wife and son living; and she gave no explanation of testator's unnatural conduct in giving her all his property. In the lower court the jury returned a verdict in favor of the woman, finding that there was no undue influence. *Held*, on appeal, that there was insufficient evidence to sustain the will, owing to undoubted undue influence. *Mullen* v. *McKeon*, (1903), — R. I. —, 55 Atl. Rep. 747.

Although the entire evidence of undue influence was circumstantial, it seems difficult to see how the jury found that there was not undue influence, but such nevertheless was their verdict, and it is usually considered the province of the jury by their verdict to determine disputed facts. An interesting case with which to compare this is *Riley* v. *Sherwood* (1898), 144 Mo. 354, 45 S. W. Rep. 1077, 3 Prob. Rep. Ann. 519. In the latter case the jury returned a verdict against the will. Despite the verdict and considerable evidence, the appellate court held that the evidence of incapacity was so clearly insufficient that the jury must have found undue influence which was also alleged, and held further that there was no sufficient proof of undue influence and that the lower court should have sustained a demurrer to the evidence. Both of these cases, while directly in contrast as to their immediate effects, seem to usurp the jurisdiction of the jury, the general rule being that the question of undue influence is one of fact to be determined by the jury. *Monroe* v. *Barclay*, 17 O. St. 302, 93 Am. Dec. 620; *Dean* v. *Negley*, 41 Pa. St. 312, 80 Am. Dec. 620.